

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

1. PURPOSES AND LIMITATIONS

18 1.1 Disclosure and discovery activity in this action are likely to involve production of
19 confidential, proprietary, or private information for which special protection from public disclosure
20 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
21 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
22 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
23 or responses to discovery and that the protection it affords from public disclosure and use extends
24 only to the limited information or items that are entitled to confidential treatment under the
25 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that
26 this Stipulated Protective Order does not entitle them to file confidential information under seal;
27 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
28 applied when a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.4 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
6 Civil Procedure 26(c).7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
8 as their support staff).9 2.4 Designating Party: a Party or Non-Party that designates information or items that it
10 produces in disclosures or in responses to discovery as "CONFIDENTIAL."11 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
12 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
13 transcripts, and tangible things), that are produced or generated in disclosures or responses to
14 discovery in this matter.15 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
16 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
17 consultant in this action.18 2.7 House Counsel: attorneys who are employees of a party to this action. House
19 Counsel does not include Outside Counsel of Record or any other outside counsel.20 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
21 entity not named as a Party to this action.22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
23 but are retained to represent or advise a party to this action and have appeared in this action on
24 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.25 2.10 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.12 Professional Vendors: persons or entities that provide litigation support services
 2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
 3 storing, or retrieving data in any form or medium) and their employees and subcontractors.

4 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
 5 "CONFIDENTIAL."

6 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 7 Producing Party.

8 3. SCOPE

9 3.1 The protections conferred by this Stipulation and Order cover not only Protected
 10 Material (as defined above), but also (1) any information copied or extracted from Protected
 11 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
 12 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
 13 Material. However, the protections conferred by this Stipulation and Order do not cover the
 14 following information: (a) any information that is in the public domain at the time of disclosure to a
 15 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
 16 result of publication not involving a violation of this Order, including becoming part of the public
 17 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the
 18 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
 19 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
 20 Protected Material at trial shall be governed by a separate agreement or order.

21 4. DURATION

22 4.1 Even after final disposition of this litigation, the confidentiality obligations imposed
 23 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
 24 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
 25 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
 26 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 27 including the time limits for filing any motions or applications for extension of time pursuant to
 28 applicable law.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each Party or
 3 Non-Party that designates information or items for protection under this Order must take care to
 4 limit any such designation to specific material that qualifies under the appropriate standards. The
 5 Designating Party must designate for protection only those parts of material, documents, items, or
 6 oral or written communications that qualify – so that other portions of the material, documents,
 7 items, or communications for which protection is not warranted are not swept unjustifiably within
 8 the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
 10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
 11 encumber or retard the case development process or to impose unnecessary expenses and burdens on
 12 other parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it designated for
 14 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
 15 that it is withdrawing the mistaken designation.

16 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this Order
 17 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 18 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 19 designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic documents, but
 22 excluding transcripts of depositions or other pretrial or trial proceedings), that the
 23 Producing Party affix the legend “CONFIDENTIAL” to each page that contains
 24 protected material. If only a portion or portions of the material on a page qualifies for
 25 protection, the Producing Party also must clearly identify the protected portion(s)
 26 (e.g., by making appropriate markings in the margins).

27 A Party or Non-Party that makes original documents or materials available for
 28 inspection need not designate them for protection until after the inspecting Party has

1 indicated which material it would like copied and produced. During the inspection
 2 and before the designation, all of the material made available for inspection shall be
 3 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
 4 it wants copied and produced, the Producing Party must determine which documents,
 5 or portions thereof, qualify for protection under this Order. Then, before producing
 6 the specified documents, the Producing Party must affix the "CONFIDENTIAL"
 7 legend to each page that contains Protected Material. If only a portion or portions of
 8 the material on a page qualifies for protection, the Producing Party also must clearly
 9 identify the protected portion(s) (e.g., by making appropriate markings in the
 10 margins).

- 11 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 12 Designating Party identify on the record, before the close of the deposition, hearing,
 13 or other proceeding, all protected testimony.
- 14 (c) for information produced in some form other than documentary and for any other
 15 tangible items, that the Producing Party affix in a prominent place on the exterior of
 16 the container or containers in which the information or item is stored the legend
 17 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
 18 protection, the Producing Party, to the extent practicable, shall identify the protected
 19 portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 21 designate qualified information or items does not, standing alone, waive the Designating Party's
 22 right to secure protection under this Order for such material. Upon timely correction of a
 23 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
 24 accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 27 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,

1 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
 2 confidentiality designation by electing not to mount a challenge promptly after the original
 3 designation is disclosed.

4 6.2 Procedure for Challenges. If a Party or Non-Party seeks to challenge a designation of
 5 confidentiality, they must do so pursuant to the process governing discovery disputes set forth in
 6 Magistrate Judge Ryu's Standing Order and the Notice of Reference and Order Re Discovery
 7 Procedures (Doc. No. 55).

8 6.3 The burden of persuasion in any such challenge proceeding shall be on the
 9 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or
 10 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 11 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a
 12 motion to retain confidentiality as described above, all parties shall continue to afford the material in
 13 question the level of protection to which it is entitled under the Producing Party's designation until
 14 the court rules on the challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 17 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 19 the categories of persons and under the conditions described in this Order. When the litigation has
 20 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 21 DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a location
 23 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
 25 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 26 information or item designated "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 28 employees of said Outside Counsel of Record to whom it is reasonably necessary

1 to disclose the information for this litigation and who have signed the
 2 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
 3 Exhibit A;

- 4 (b) the officers, directors, and employees (including House Counsel) of the
 5 Receiving Party to whom disclosure is reasonably necessary for this litigation
 6 and who have signed the "Acknowledgment and Agreement to Be Bound"
 7 (Exhibit A);
 8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 9 reasonably necessary for this litigation and who have signed the
 10 "Acknowledgment and Agreement to Be Bound" (Exhibit A);
 11 (d) the court and its personnel;
 12 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
 13 and Professional Vendors to whom disclosure is reasonably necessary for this
 14 litigation and who have signed the "Acknowledgment and Agreement to Be
 15 Bound" (Exhibit A);
 16 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
 17 necessary and who have signed the "Acknowledgment and Agreement to Be
 18 Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
 19 by the court. Pages of transcribed deposition testimony or exhibits to depositions
 20 that reveal Protected Material must be separately bound by the court reporter and
 21 may not be disclosed to anyone except as permitted under this Stipulated
 22 Protective Order; and
 23 (g) the author or recipient of a document containing the information or a custodian or
 24 other person who otherwise possessed or knew the information.

25 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
 26 **LITIGATION**

27 8.1 If a Party is served with a subpoena or a court order issued in other litigation that
 28 compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that

1 Party must:

- 2 (a) promptly notify in writing the Designating Party. Such notification shall include a
3 copy of the subpoena or court order;
- 4 (b) promptly notify in writing the party who caused the subpoena or order to issue in
5 the other litigation that some or all of the material covered by the subpoena or
6 order is subject to this Protective Order. Such notification shall include a copy of
7 this Stipulated Protective Order; and
- 8 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
9 Designating Party whose Protected Material may be affected.

10 8.2 If the Designating Party timely seeks a protective order, the Party served with the
11 subpoena or court order shall not produce any information designated in this action as
12 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued,
13 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear
14 the burden and expense of seeking protection in that court of its confidential material – and nothing
15 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
16 action to disobey a lawful directive from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
18 LITIGATION

19 9.1 The terms of this Order are applicable to information produced by a Non-Party in this
20 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
21 connection with this litigation is protected by the remedies and relief provided by this Order.
22 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
23 protections.

24 9.2 In the event that a Party is required, by a valid discovery request, to produce a Non-
25 Party’s confidential information in its possession, and the Party is subject to an agreement with the
26 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- (a) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- (b) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- (c) make the information requested available for inspection by the Non-Party.

8 9.3 If the Non-Party fails to object or seek a protective order from this court within 14
9 days of receiving the notice and accompanying information, the Receiving Party may produce the
10 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
11 seeks a protective order, the Receiving Party shall not produce any information in its possession or
12 control that is subject to the confidentiality agreement with the Non-Party before a determination by
13 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
14 seeking protection in this court of its Protected Material.

15 | 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this Stipulated
18 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
19 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
20 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of
21 all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment
22 and Agreement to Be Bound” that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
24 MATERIAL

25 11.1 When a Producing Party gives notice to Receiving Parties that certain inadvertently
26 produced material is subject to a claim of privilege or other protection, the obligations of the
27 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
28 is not intended to modify whatever procedure may be established in an e-discovery order that

1 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
 2 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
 3 information covered by the attorney-client privilege or work product protection, the parties may
 4 incorporate their agreement in the stipulated protective order submitted to the court.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
 7 its modification by the court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 9 no Party waives any right it otherwise would have to object to disclosing or producing any
 10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 11 Party waives any right to object on any ground to use in evidence of any of the material covered by
 12 this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the Designating Party or a
 14 court order secured after appropriate notice to all interested persons, a Party may not file in the
 15 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
 16 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
 17 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
 18 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
 19 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
 20 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
 21 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
 22 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

23 **13. FINAL DISPOSITION**

24 13.1 Within 60 days after the final disposition of this action, as defined in paragraph 4,
 25 each Receiving Party must return all Protected Material to the Producing Party or destroy such
 26 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
 27 compilations, summaries, and any other format reproducing or capturing any of the Protected
 28 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a

written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12

DATED: 2/21/14 _____ /s/ Maya Zysman _____

14

Maya Zysman, *pro se*

15

DATED: 2/20/14 _____ /s/ Justin H. Jenkins _____

17

David A. Davenport (admitted *pro hac vice*)
Justin H. Jenkins (admitted *pro hac vice*)
Attorney for Defendants

19

PURSUANT TO STIPULATION, IT IS SO ORDERED.

21

DATED: Hgdtwct{ '43."4236 _____ 

23

United States District/Magistrate Judge

24

25

26

27

28

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for the
 Northern District of California on [date] in the case of **Zysman v. Zanett Inc., et al., Ca. No. 4:13-**
cv-02813-YGR. I agree to comply with and to be bound by all the terms of this Stipulated Protective
 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person or entity except
 in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern
 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
 if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number] as
 my California agent for service of process in connection with this action or any proceedings related
 to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

8802028v1